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5 Attorney for: Secured Creditor,
6 M&T Bank
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10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION
13

14 In re:) Case No. 10-46537 L
15)
16 Timothy Nigma,) Chapter 13
17 Linda Ann Nigma,)
18 Debtors.) RS No. RVP-9676
19)
20) **MOTION FOR RELIEF FROM**
21) **AUTOMATIC STAY**
22)
23) Date: November 6, 2013
24) Time: 9:30 am
25) Ctrm: 220
26) Place: 1300 Clay Street
27) Oakland, CA
28)
29)

30 M&T Bank ("Secured Creditor" or "Movant" herein), moves this Court for an Order
31 Terminating the Automatic Stay of 11 U.S.C. § 362 as to moving party (and the Trustee under
32 the Deed of Trust securing moving party's claim) so that moving party and its Trustee may
33 commence and continue all acts necessary to foreclose under the Deed of Trust secured by the

1 Debtors' property, commonly known as 1717 El Toro Way, Pinole, CA 94564, ("Property"
2 herein).

3 As stated in the attached Declaration, the Debtors have failed to make 4 post-petition
4 payments (7/13 through 10/13).

5 Based on the foregoing, Secured Creditor alleges that it is not adequately protected.
6 Secured Creditor is not receiving regular monthly payments, and is unfairly delayed from
7 proceeding with the foreclosure of the subject Property. Accordingly, relief from the automatic
8 stay should be granted to Secured Creditor pursuant to 11 U.S.C. § 362(d)(1) and (2).

9 WHEREFORE, Secured Creditor prays for judgment as follows:

- 10 1. For an Order granting relief from the automatic stay, permitting Secured Creditor to
11 proceed with the foreclosure under Secured Creditor's Deed of Trust, and to sell the
12 subject Property at a trustee's sale under the terms of the Deed of Trust to proceed
13 with any and all post foreclosure sale remedies, including the unlawful detainer action
14 or any other action necessary to obtain possession of the Property.
- 15 2. For an Order that the fourteen day stay described by Bankruptcy Rule 4001(a)(3) be
16 waived.
- 17 3. For an Order modifying the automatic stay to protect Secured Creditor's interest, as
18 the Court deems proper.
- 19 4. For attorneys' fees and costs incurred herein.
- 20 5. For such other relief as the Court deems proper.
- 21 6. The Moving Party, at its option, may offer, provide and enter into any potential
22 forbearance agreement, loan modification, refinance agreement or other loan
23 workout/loss mitigation agreement as allowed by state law. The Movant may contact
24 the Debtor via telephone or written correspondence to offer such an agreement. Any
25 such agreement shall be non-recourse unless included in a reaffirmation agreement.

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1 7. Furthermore, Movant may contact the Debtor to comply with California Civil Code
2 Section 2923.5.

3 8. Movant is not required to file payment change letters due to obtaining relief from the
4 automatic stay.
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6 Dated: October 17, 2013

McCarthy & Holthus, LLP

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8 By: /s/ Roshni V. Patel
9 Roshni V. Patel, Esq.
10 Attorneys for Secured Creditor
M&T Bank
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